

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 SHERRY L. LEDAKIS, State Bar No. 131767
Deputy Attorney General
4 California Department of Justice
110 West "A" Street, Suite 1100
5 San Diego, CA 92101

6 P.O. Box 85266
San Diego, CA 92186-5266
7 Telephone: (619) 645-2105
Facsimile: (619) 645-2061
8
9 Attorneys for Complainant

10 **BEFORE THE**
CALIFORNIA BOARD OF OCCUPATIONAL THERAPY
11 **DEPARTMENT OF CONSUMER AFFAIRS**
12 **STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:

Case No. OT 2004 117

14 DAVID ALAN THURBER

15 3722 10th Avenue
San Diego, CA 92103
16 Occupational Therapist License No. OT 5072

**FIRST AMENDED
ACCUSATION**

17 Respondent.
18

19 Complainant alleges:

20 **PARTIES**

21 1. Heather Martin (Complainant) brings this Accusation solely in her official
22 capacity as the Executive Officer of the California Board of Occupational Therapy, Department
23 of Consumer Affairs.

24 2. On or about December 23, 2002, the California Board of Occupational
25 Therapy issued Occupational Therapist License Number OT 5072 to David Alan Thurber
26 (Respondent). Said license will expire on October 31, 2007, unless renewed.
27
28

JURISDICTION

3. This Accusation is brought before the California Board of Occupational Therapy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2570.26 states:

(a) The board may, after a hearing, deny, suspend, revoke, or place on probation a license, certificate, inactive license, inactive certificate, or limited permit.

(b) As used in this chapter, "license" includes a license, certificate, limited permit, or any other authorization to engage in practice regulated by this chapter.

(c) The proceedings under this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted therein. therein.

5. Section 2570.27. of the Code states:

(a) The board may discipline a licensee by any or a combination of the following methods:

(1) Placing the license on probation with terms and conditions.

(2) Suspending the license and the right to practice occupational therapy for a period not to exceed one year.

(3) Revoking the license.

(4) Suspending or staying the disciplinary order, or portions of it, with or without conditions.

(5) Taking other action as the board, in its discretion, deems proper.

(b) The board may issue an initial license on probation, with specific terms and conditions, to any applicant who has violated any provision of this chapter or the regulations adopted pursuant to it, but who has met all other requirements for licensure.

6. Section 2570.28 states:

The board may deny or discipline a licensee for any of the following:

(a) Unprofessional conduct, including, but not limited to, the following:

(1) Incompetence or gross negligence in carrying out usual occupational therapy functions.

(2) Repeated similar negligent acts in carrying out usual occupational therapy functions,

(h) Committing any fraudulent, dishonest, or corrupt act that is substantially related to the qualifications, functions, or duties of a licensee.

(k) Falsifying or making grossly incorrect, grossly inconsistent, or unintelligible entries in a patient or hospital record or any other record.

1 7. Section 2570.30 of the Code states:

2 The board shall retain jurisdiction to proceed with any
3 investigation, action or disciplinary proceeding against a license, or to render a
4 decision suspending or revoking a license, regardless of the expiration, lapse, or
suspension of the license by operation of law, by order or decision of the board or
a court of law, or by the voluntary surrender of a license by the licensee.

5 8. Section 125.3 of the Code provides, in pertinent part, that the Board may
6 request the administrative law judge to direct a licensee found to have committed a violation or
7 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
8 and enforcement of the case.

9 **Statement of Alleged Facts:**

10 9. David Alan Thurber (Respondent) was hired on September 28, 2004 by
11 CareerStaff Unlimited to work as one of their occupational therapists. CareerStaff Unlimited
12 contracted with the San Diego City School District to provide occupational therapy services for
13 San Diego City Schools. As part of Respondent's duties, he was to provide assessment,
14 consultation and direct occupational therapy to students in special education programs. These
15 children suffer from various intellectual and emotional challenges that require special attention to
16 assist them in reaching their potential. Respondent's responsibility was to meet with and provide
17 individual treatment and intervention with special needs children at their respective schools. Part
18 of Respondent's duties required him to meet children directly at school, which required him to
19 sign in and out of the school facilities on every occasion. In addition, Respondent was required
20 to prepare and keep confidential accurate treatment records for each of his assigned special needs
21 patients. The treatment record for each and every child was required to be maintained on the
22 school premises for easy access and review. Each of the patient's records were maintained in a
23 binder and were not allowed to be removed from the school.

24 10. As part of his accountability for work, Respondent was required to
25 maintain and submit weekly time sheets to the San Diego City School District's Therapy
26 Services Supervisor. Respondent's time sheets required him to document and certify the number
27 of hours he worked during the week. Respondent executed his weekly time sheets by "certifying
28 that the hours shown are correct and that the employee performed satisfactorily."

1 11. Respondent was assigned to work forty hours a week with Rolando Park
2 Elementary School's special education children. During the week of February 28, 2005 through
3 March 4, 2005, Respondent certified that he worked thirty two hours at Rolando Park Elementary
4 School. Respondent prepared and documented that he provided individual therapy services to
5 several students, when in fact, Respondent was in Idaho. According to patient records prepared
6 and submitted by Respondent, he conducted twenty four individual therapy sessions with
7 Rolando Park Elementary special education students, when in fact, he was in Idaho.

8 12. On March 31, 2005, Respondent billed for and certified that he performed
9 thirteen therapy sessions, each lasting thirty minutes, with special needs children at Rolando Park
10 Elementary. However, based upon review of patient records, the mandatory school sign in roster,
11 and observation, Respondent was not at the school. Accordingly, he could not have conducted
12 therapy sessions with children at the school.

13 13. On or about April 7, 2005, San Diego City Schools Therapy Services
14 Supervisor conducted an investigation at Rolando Park Elementary School to review
15 Respondent's patient records and student working files. The investigation could not locate any
16 of the patient records which were required to be maintained and kept at the school for easy access
17 and review by staff. Based on the conspicuous absence of any patient records, it was impossible
18 to verify or confirm that Respondent had provided therapy sessions to any of the special
19 education children at the school.

20 14. On April 22, 2005, the Board received a complaint providing information
21 that Respondent engaged in fraudulent billing and falsification of patient records. An internal
22 investigation and audit was performed by CareerStaff Unlimited and the San Diego City School
23 District Therapy Services Department. It was determined that Respondent had falsely billed
24 \$21,521.00 to the School District for therapy work and services that were never performed. In
25 addition to falsifying his billing to the School District, Respondent falsified his hours working
26 which resulted in him getting paid \$31,284.00 for his services when in fact, he should have only
27 been paid \$17,352.00. CareerStaff Unlimited over paid respondent and could not collect that
28 money from the School District. Accordingly, Respondent owes his employer, CareerStaff

Unlimited, \$13,932.00, which is the difference between what he was paid based upon his dishonesty (\$31,284.00) and what he should have been paid based upon the actual hours worked (\$17,352.00). In addition to the financial loss, Respondent's special education patients have detrimentally suffered as a result of his repeated acts of negligence, fraud, dishonesty and concealed absenteeism.

15. Sometime during the 2004-2005 school year, Respondent reported to the school district that he could not complete his work because he was having problems with his district issued laptop computer. In an effort to repair the computer it was discovered that pornography had been downloaded onto the district issued computer. The downloaded material included nude male photographs, and sites for on-line dating and escort services.

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct-Incompetence and/or Gross Negligence)

16. Respondent is subject to disciplinary action under section 2570.28(a)(1) for incompetence and/or gross negligence in the performance of his functions as an occupational therapist as set forth in the alleged facts above.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct-Repeated Acts of Negligence)

17. Respondent is subject to disciplinary action under section 2570.28(a)(2) for repeated similar negligent acts in carrying out usual occupational therapy functions as set forth in the alleged facts above.

THIRD CAUSE FOR DISCIPLINE

(Fraud-Substantially Related to Duties)

18. Respondent is subject to disciplinary action under section 2570.28(h) for committing fraudulent, dishonest, or corrupt acts that are substantially related to the qualifications, functions, or duties of a licensee as set forth in the alleged facts above.

///

///

///

1 FOURTH CAUSE FOR DISCIPLINE

2 (Falsification of Patient Records)

3 19. Respondent is subject to disciplinary action under section 2570.28(k) for
4 falsifying or making grossly incorrect, grossly inconsistent, or unintelligible entries in a patient or
5 hospital record or any other record as set forth in the alleged facts above.

6 FIFTH CAUSE FOR DISCIPLINE

7 20. Respondent is subject to disciplinary action under section 2570.28(a) for
8 unprofessional conduct for downloading pornography onto his school district issued laptop
9 computer, as set forth in the alleged facts above.

10 PRAYER

11 WHEREFORE, Complainant requests that a hearing be held on the matters herein
12 alleged, and that following the hearing, the California Board of Occupational Therapy issue a
13 decision:

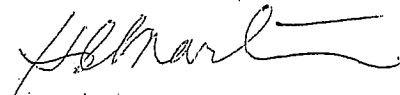
14 1. Revoking or suspending Occupational therapist license Number OT 5072,
15 issued to David Alan Thurber;

16 2. Ordering David Alan Thurber to pay the California Board of Occupational
17 Therapy the reasonable costs of the investigation and enforcement of this case, pursuant to
18 Business and Professions Code section 125.3;

19 3. Order David Alan Thurber to pay his former employer, CareerStaff
20 Unlimited, \$13,932.00 in restitution which constitutes salary paid for which he did not earn;

21 4. Taking such other and further action as deemed necessary and proper.

22
23 DATED: March 28, 2008

24
25 
26 HEATHER MARTIN
27 Executive Officer
28 California Board of Occupational Therapy
Department of Consumer Affairs
State of California
Complainant